

## IN THE MATTER OF ARBITRATION BETWEEN

<b>LAW ENFORCEMENT LABOR</b>	)	<b>ARBITRATION</b>
<b>SERVICES, INC.</b>	)	<b>AWARD</b>
	)	
<b>and</b>	)	
	)	<b>MATEJCEK</b>
	)	<b>GRIEVANCE</b>
	)	
	)	
<b>STEELE COUNTY</b>	)	
	)	<b>BMS CASE NO. 06-PA-620</b>
	)	

Arbitrator: Stephen F. Befort

Hearing Date: August 23, 2006

Date post-hearing briefs received: September 26, 2006

Date of decision: October 26, 2006

### APPEARANCES

For the Union: Tiffany L. Schmidt

For the Employer: Darrell A. Jensen

### INTRODUCTION

Law Enforcement Labor Services, Inc. (Union) is the exclusive representative of a unit of deputy sheriffs and sergeants employed by Steele County (Employer) in its Sheriff's Office. The Union, in this grievance, claims that the City violated the parties' collective bargaining agreement by issuing a written reprimand to Deputy Troy Matejcek without just cause. The Employer claims that it was justified in issuing the discipline because the grievant failed to obtain authorization before altering assigned shift hours.

The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

## **ISSUE**

Did the Employer have just cause to issue a written reprimand to the grievant for his deviation from assigned work hours on October 10 and 11, 2005? If not, what is the appropriate remedy?

## **RELEVANT CONTRACT LANGUAGE**

### **ARTICLE IV**

#### **EMPLOYER RIGHTS AND DIVISION OF RESPONSIBILITY**

- 4.1 The EMPLOYER retains the full and unrestricted right to operate and manage all manpower, facilities and equipment, to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules; and to perform any inherent managerial function not specifically limited by this Agreement.
- 4.2 Any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the EMPLOYER to modify, establish or eliminate.

### **ARTICLE IX**

#### **DISCIPLINE**

- 9.1 The EMPLOYER will discipline permanent employees for just cause only. Discipline will be in the form of the following forms:

- (1) Discharge
- (2) Demotion
- (3) Suspension
- (4) Written reprimand
- (5) Oral reprimand

## **FACTUAL BACKGROUND**

Troy Matejcek has worked for Steele County as a Deputy Sheriff since 1988. He started as a patrol officer and then transferred to the Investigations Unit in 2002.

The Employer has two investigators in its Sheriff's office – Gary Okins and the grievant. Until July 2005, both investigators worked an 8:00 a.m. to 4:00 p.m., Monday through Friday shift. In a memorandum dated July 27, 2005, Sheriff Scott Ringhofer announced the following shift change:

As of August 8, 2005 there will be two shifts for investigations. This is to provide better and extended investigative coverage, cut down on overtime and foster a more positive interactivity between patrol deputies and investigators.

Shift assignments will be:

Investigator Okins	
0800 – 1600 hours	Monday through Friday

Investigator Matejcek	
1200 – 2000 hours	Monday through Friday

In the absence of the Sheriff and Chief Deputy, this position will report to and take direction from the Sergeant on Duty.

On Sunday, October 9, 2005, Investigator Matejcek was called by dispatch at approximately 4:00 a.m. to handle an investigation of suspected arson fires in the Steele County town of Medford, Minnesota. He interviewed five detained suspects, resulting in the arrest of two adults and one juvenile. Investigator Matejcek completed these tasks by around 2:00 p.m. Since all of this time was in addition to his regularly assigned shift, Investigator Matejcek earned overtime pay for all of the October 9 work.

On the following day, Monday, October 10, Investigator Matejcek came into to work early, at 8:00 a.m., for the purpose of completing the paperwork on the juvenile suspect. According to applicable procedural rules, juveniles must be brought before the

court within 24 hours of arrest. Sheriff Ringhofer observed Investigator Matejcek that morning and inquired on the progress of the arson case. According to Investigator Matejcek's testimony, the Sheriff did not say anything about Matejcek's presence in the office prior to his assigned shift. Investigator Matejcek completed work at 4:00 p.m., and no overtime pay obligation was incurred.

On Tuesday, October 11, Investigator Matejcek again began work at 8:00 a.m. in order to complete the reports on the remaining two adult arrestees who needed to be brought before the court within 36 hours of arrest. A short time thereafter, Chief Deputy Sheriff Milo Dahlin came into Investigator Matejcek's office and asked him why he was there and if he had obtained permission to change his shift. Investigator Matejcek explained his work on the investigation file, but acknowledged that he had not obtained supervisory permission for the change of shift. Chief Deputy Dahlin told Investigator Matejcek to go home. Investigator Matejcek instead went to the County Attorney's office and assisted on the preparation of the documentation necessary to enable the County to charge the two adult suspects within the applicable time limits.

At the hearing, the parties offered conflicting testimony concerning departmental policies. Chief Deputy Dahlin testified that the department has a longstanding practice that an employee must obtain the permission of either the sheriff or the chief deputy before changing assigned work hours. In contrast, Investigator Matejcek testified that Sheriff Ringhofer orally informed him during the July 27, 2005 meeting announcing the new shift schedules that he could change work hours as needed without permission. Both parties agree that the department permitted employees to extend assigned hours as

necessary without seeking supervisory permission, even if such resulted in the payment of overtime.

The Employer, on October 12, disciplined Investigator Matejcek for what it perceived as a unilateral change in shift hours. An October 24 disciplinary letter signed by Chief Deputy Dahlin explained as follows:

The written warning you received is not because you altered your work hours. There are many reasons that work hours may need to be altered, both to benefit the Office and the Officer. The reason for the written warning is you failed to obtain authorization from the Sheriff or Chief Deputy before altering your hours. Even in the event of two officers switching shifts that switch must be authorized.

Although the letter described the discipline as a written “warning,” that is not one of the types of discipline authorized by the parties’ collective bargaining agreement, and it is more appropriate to consider the disciplinary sanction imposed as a written reprimand. Chief Deputy Dahlin testified that such a sanction was appropriate, in part, because Investigator Matejcek previously had been issued an oral warning in 2004 for improper use of a county credit card as well as being subject to a non-disciplinary performance improvement plan during 2004 because of management concerns with respect to “negative attitude and disrespect.” The Union filed a grievance challenging the Employer’s discipline, and that grievance has now advanced to this arbitration proceeding.

## **POSITIONS OF THE PARTIES**

### **Employer Position:**

The Employer contends that the Sheriff’s Office has a longstanding practice of requiring employees to obtain permission from supervisors before deviating from a scheduled work shift. Investigator Matejcek was aware of this policy yet unilaterally

altered his work shift on both October 10 and October 11, 2005. According to the Employer, a written reprimand is an appropriate progressive response to Investigator Matejcek's repeated failure to follow reasonable work policies.

**Union Position:**

The Union argues that the Employer has not presented sufficient evidence to establish the existence of its purported shift change request policy. Investigator Matejcek further maintains that Sheriff Ringhofer orally advised him during the July 27 meeting that he could alter his shift whenever such became necessary. Such necessitous circumstances occurred on October 10 and 11, 2005, owing to the deadlines that Investigator Matejcek faced in terms of completing required documentation. As a bottom line, the Union concludes that the discipline was the result of a failure of communication and is not supported by just cause.

**DISCUSSION AND OPINION**

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its termination decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established by a preponderance of the evidence, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See ELKOURI & ELKOURI, HOW ARBITRATION WORKS 948 (6<sup>th</sup> ed. 2003).* Both of these issues are discussed below.

**A. The Alleged Misconduct**

Since it is undisputed that Investigator Matejcek did not request permission to alter his assigned work schedule on either October 10 or 11, 2005, the only remaining question with respect to this first issue is whether this conduct violated an established employer policy. The Employer argues in the affirmative and asserts the existence of a policy by which Sheriff's Office employees are required to seek approval for a desired shift change. The Union argues in the negative and claims that Sheriff Ringhofer orally gave Investigator Matejcek permission to deviate from his assigned shift on an as needed basis.

Although the evidence is in conflict, I believe that the Employer has the better of this particular argument. Chief Deputy Dahlin credibly testified to the existence of a longstanding Sheriff's Office policy of requiring employee's to obtain the permission of either the Sheriff or Chief Deputy before altering assigned work times. In addition, Gary Okins, the department's other Investigator, testified that he always notifies the Sheriff or Chief Deputy concerning any change in shift. This testimony is bolstered by the widely-accepted principle that management retains the right to schedule work except as restricted by a collective bargaining agreement. *See ELKOURI & ELKOURI, HOW ARBITRATION WORKS* 722 (6<sup>th</sup> ed. 2003). In this instance, management announced a specific work schedule, and the parties' contract contains no restriction on the employer's right to expect adherence to that schedule.

The Union essentially argues that the Employer waived its right to expect that Investigator Matejcek would adhere to the assigned schedule, not by virtue of the parties' agreement, but by Sheriff Ringhofer's alleged oral assurance at the July 27 meeting.

Based on the evidence presented, I do not think that such a waiver is clearly established. While Investigator Matejcek testified that the Sheriff orally stated at the meeting that Matejcek was free to deviate from the schedule as needed, Chief Deputy Dahlin, who also was present at this meeting, denies the utterance of any such statement. Further, even if some assurance was offered about necessary shift changes, it is quite possible that the assurance conveyed was that permission generally would be granted rather than that Matejcek would be relieved of communicating with supervisory permission entirely.

Based on the above, I find that the Employer had the right to expect that Investigator Matejcek would seek permission from one of his supervisors before altering his assigned work shift. Since Investigator Matejcek unilaterally altered his work shifts on October 10 and 11, 2005 without seeking such permission, the Employer has sufficiently established the alleged misconduct at issue.

#### **B. Appropriate Remedy**

The Employer contends that a written reprimand should be sustained as “the least of the appropriate responses available to management.” In addition, the Employer maintains that a written reprimand properly and progressively builds upon previous measures (oral warning and performance improvement plan) aimed at improving Investigator Matejcek’s behavior.

Nonetheless, a number of mitigating factors support a reduction in remedy. These factors include the following:

- 1) Investigator Matejcek altered his shift on the two days in question, not for personal benefit, but to complete the preparation of documentation needed in order to bring charges against three criminal suspects;



- 2) By beginning work early on these two days, as opposed to working late on October 9 or October 10, Investigator Matejcek saved the Employer the cost of overtime pay, an objective specifically noted on Sheriff Ringhofer's July 27, 2005 memorandum; and
- 3) Given that the Employer permitted employees unilaterally to extend work hours as needed and given that the record is unclear as to what Sheriff Ringhofer said in explaining the new shift schedule at the July 27 meeting, Investigator Matejcek may well have been confused as to his authority to change work hours on his own.

In the end, this dispute primarily resulted from a failure of clear communications. Under these circumstances, it is preferable to facilitate clarity in work rules rather to enact punishment. Accordingly, the Employer's written reprimand sanction is modified to that of an oral reprimand (warning) coupled with a directive that the Employer counsel the grievant as to expected shift scheduling procedures.

### **AWARD**

The grievance is sustained in part and denied in part. The Employer has just cause to discipline Investigator Matejcek, but the sanction is reduced to that of an oral reprimand. The Employer further is directed to modify Investigator Matejcek's personnel file to reflect this award.

Dated: October 26, 2006

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Stephen F. Befort  
Arbitrator